

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1 MIGDALIA AMALBERT GARCIA,
2 GLADYS AMALBERT GARCIA,
3 NORMA AMALBERT GARCIA in
4 substitution of
5 EDNA GARCIA COLON and
6 JOSE AMALBERT FIGUEROA

5 Plaintiffs,

6 v.

7 K MART CORPORATION et al.,

8 Defendants.

CLERK'S OFFICE ANNEX
U.S. DISTRICT COURT
OLD SAN JUAN, PR.

2000 AUG 15 PM 5:51

RECEIVED AND FILED

CIVIL NO. 98-1478 (RLA)

10 **ORDER IN THE MATTER OF PRETRIAL MOTIONS**

11 The following motions are hereby disposed of as set forth below:

12 **Expert testimony**

13 Defendant's Urgent Motion Regarding Medical Expert Testimony
14 filed on August 10, 2000 (**docket No. 86**) requesting that both
15 plaintiffs' and defendant's medical experts testify on August 17,
16 2000, is **DENIED**, given plaintiffs' representation that their medical
17 expert witness, DR. ORLANDO FERNANDEZ, cannot appear in Court on
18 August 17, 2000 due to prior scheduled surgeries. As a result,
19 arrangements already have been made for him to testify on August 16,
20 2000. See Informative Motion Regarding Expert Testimony at Trial,
21 filed by plaintiffs on August 14, 2000 (**docket No. 92**).
22

23 **Postponement of Trial**

24 Before the Court is K MART's Urgent Motion Regarding Trial
25 Scheduled to Start on August 15, 2000.
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1 The Court has repeatedly manifested to the parties in this
2 action its intention to proceed to trial in August as announced on
3 March 1, 2000 (docket No. 62).

4 KMAR'T's reasserted contention that it has not been given
5 adequate or sufficient time to carry out discovery related to MS.
6 GARCIA's prior history of physical ailments is unfounded. The
7 medical history of a seventy-three-year-old woman who, according to
8 the complaint, has been rendered unable to walk again¹ as a result of
9 an accident due to defendant's negligence is obviously relevant from
10 the moment defendant receives the notice of suit. The seriousness of
11 the damages claimed since the onset of the litigation is such that
12 MRS. GARCIA's medical condition both before and after the accident is
13 necessarily at issue. There was no need for defendant to wait for
14 notification of plaintiff's death to realize the necessity of
15 obtaining prior medical information to defend itself against the
16 grave consequences of the damages alleged.

17 As to KMAR'T's argument that they must be permitted at this stage
18 to bring in third parties who allegedly treated MRS. GARCIA
19 negligently, we remind defendant that the Supreme Court of Puerto
20 Rico clearly established in Merced v. Gobierno de la Capital, 85
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24 ¹ The original complaint filed on May 1, 1998, states, at p. 3,
25 § 11, as follows: "That the impact received from the shopping carts
caused plaintiff to fall and receive serious injuries to her arm, hip
and leg, **which have not allowed her to walk again.**" (emphasis ours).

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1 D.P.R. 552 (1962) that one who has caused physical damages to a
2 person is responsible for any other bodily injury that may result
3 from the intervention of a third party in the process of
4 administering assistance or treatment to such person, regardless of
5 whether the third party incurred or not in negligence. In addition,
6 since "[c]learly, nothing stands in the way of the one who originally
7 caused the damages to recover from the second, who by his conduct
8 increased the damages...". Id., at 557 (citations omitted)
9 (translation ours), defendant may still seek contribution from third
10 parties by way of a separate suit ("nivelación") in the event it is
11 found liable in this case.

13 Accordingly, defendant's Urgent Motion... (docket No. 86) filed
14 on August 11, 2000, is hereby **DENIED**.

15 This Order shall be notified by FAX to counsel of record.

16 IT IS SO ORDERED.

17 In San Juan, Puerto Rico, this 15th day of August, 2000.
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22 RAYMOND L. ACOSTA
23 United States District Judge
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